

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LAEL SAMONTE,)	Civil No. 05-00309 HG-KSC
)	
Plaintiff,)	
)	ORDER ADOPTING MAGISTRATE
vs.)	JUDGE'S FINDINGS AND
)	RECOMMENDATION TO GRANT IN
KAY BAUMAN, et al.,)	PART AND DENY IN PART MOTION
)	TO DISMISS
Defendants.)	
_____)	

On January 5, 2006, the magistrate judge issued his Findings and Recommendations to Grant in Part and Deny in Part Motion to Dismiss (the "Findings and Recommendation").

On January 30, 2006, before this Court adopted the Findings and Recommendation, Plaintiff filed a Notice of Appeal to the Ninth Circuit Court of Appeals (9th Cir. Case No. 06-15265).

Under 28 U.S.C. § 1291, the Court of Appeals has jurisdiction only from final decisions of the United States District Courts. A magistrate judge's Findings and Recommendation is not a final, appealable order. Plaintiff's Notice of Appeal is therefore a nullity and does not transfer jurisdiction to the Ninth Circuit Court of Appeals. See Estate of Conners v. O'Connor, 6 F.3d 656, 659 (9th Cir. 1993).

The magistrate judge's Findings and Recommendations to Grant in Part and Deny in Part Motion to Dismiss, having been filed and served on all parties on January 9, 2006, and no objections

having been filed by any party,

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to Title 28, United States Code, Section 636(b)(1) and Local Rule 74.2, the Findings and Recommendation are ADOPTED as the opinion and order of this Court. Defendant Linda Lingle's and Defendant Kay Bauman, M.D.'s Motion to Dismiss Plaintiff's Prisoner Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 is GRANTED as to all claims against Governor Lingle, and DENIED as to claims against Dr. Kay Bauman. Defendant Lingle is DISMISSED from this action. Further, Plaintiff's request for injunctive relief, in the form of a transfer back to Hawaii so that surgery may be performed here, is DISMISSED.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 29, 2006.



A handwritten signature in dark ink, appearing to read "Helen Gillmor", written over a horizontal line.

Helen Gillmor
Chief United States District Judge

Civil No. 05-00309 HG-KSC; Samonte v. Bauman, et al.; **ORDER
ADOPTING MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATION TO GRANT
IN PART AND DENY IN PART MOTION TO DISMISS**